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United Airlines, Inc.

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

14 GLADYS C. SALAS,

15 Plaintiff,

16 vs.

17 UNITED AIRLINES, INC., a Delaware
18 Corporation, JULIANA PETANI, an individual,
SCOTT PRICKETT, an individual, and DOES 1
19 to 100, inclusive,

20 Defendants.

Case Number: 3:22-cv-4574

**DEFENDANT UNITED AIRLINES, INC.'S
NOTICE OF REMOVAL OF CIVIL
ACTION TO UNITED STATES DISTRICT
COURT**

San Mateo County Superior Court
Case No.: 22-CIV-02684
State Action Filed: July 1, 2022

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES, AND THEIR
2 ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that Defendant United Airlines, Inc. (“United” or “Defendant”)
4 hereby removes the above-captioned action from the Superior Court of the State of California for the
5 County of San Mateo to the United States District Court for the Northern District of California
6 pursuant to 28 U.S.C. §§ 1441 and 1446, asserting original federal jurisdiction on the basis of diversity
7 under 28 U.S.C. § 1332(a)(1). Pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal are
8 being served upon counsel for Plaintiff Gladys C. Salas (“Plaintiff”) and filed with the Clerk of the
9 California Superior Court for the County of San Mateo, as an exhibit to a Notice to State Court of
10 Removal to Federal Court.

11 **PROCEDURAL HISTORY**

12 1. Plaintiff filed this action against United Airlines, Inc., Juliana Petani and Scott Prickett
13 on July 1, 2022, in the Superior Court of the County of San Mateo in a case entitled, *Gladys C. Salas*
14 v. *United Airlines, Inc., et al*, Case No. 22-CIV-02684 (the “State Court Action.”)

15 2. United was served with a copy of the Summons and Complaint on July 8, 2022 through
16 its agent for service of process. Plaintiff filed a Proof of Service in the State Court Action on or about
17 July 18, 2022. A true and correct copy of Plaintiff’s filed Notice of Proof of Service which has been
18 obtained from the docket is attached hereto as **Exhibit A**.

19 3. In the State Court Action, Plaintiff alleges nine (9) state law claims arising out of the
20 Fair Employment and Housing Act (“FEHA”), the Business and Professions Code, or tort: (1)
21 discrimination; (2) harassment; (3) retaliation; (4) failure to engage in the interaction process; (5)
22 failure to provide reasonable accommodation; (6) failure to prevent, investigate, correct; (7) wrongful
23 termination in violation of public policy; (8) defamation; and (9) violation of Business and
24 Professional Code § 17200. A true and correct copy of Plaintiff’s unverified Complaint and the Civil
25 Case Cover Sheet is attached hereto as **Exhibit B**.

26 4. Pursuant to 28 U.S.C. § 1446(a), **Exhibits A and B** comprise the “cop[ies] of all
27 process, pleadings, and orders served upon such defendant or defendants in such action.”

1 5. In support of this Removal, the declaration of Delzyra Rosa, Senior Staff
2 Representative – Employment Litigation for United, is attached hereto as **Exhibit C**.

3 6. In support of this Removal, the declaration of Mona A. Razani, defense counsel for
4 United, is attached hereto as **Exhibit D**.

NO JOINDER NECESSARY

6 7. To date, upon information and belief, Individual Defendants Juliana Petani and Scott
7 Pricket (“Individual Defendants”) have not been served with a copy of the State Court Action. See,
8 **Ex. D**, Declaration of Mona A. Razani (“Razani Decl.”) ¶ 4. Because there are no other ascertainable
9 defendants in this action, no consent to removal is necessary.

BASIS FOR REMOVAL

11 8. A notice of removal must simply contain a “short and plain statement of the grounds
12 for removal.” 28 U.S.C. § 1446(a); *See also Dart Cherokee Basin Operating Co., LLC v. Owens*, 574
13 U.S. 81 (2014). This Court has original jurisdiction under 28 U.S.C. § 1332 pursuant to 28 U.S.C. §
14 1441 because it involves a controversy that exceeds the sum or value of Seventy-Five Thousand
15 Dollars (\$75,000), and because Plaintiff, United and the Individual Defendants are diverse.

DIVERSITY JURISDICTION

17 9. “[F]ederal removal jurisdiction on the basis of diversity … is determined … as of the
18 time the [Complaint] is filed and removal is effected.” *Strotek Corp. v. Air Transport Ass’n. of Am.*,
19 300 F.3d 1129, 1131 (9th Cir. 2002). Courts disregard fictitious “DOE” defendants when evaluating
20 diversity. *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690 (9th Cir. 1998).

21 | **Plaintiff's Citizenship**

22 10. A natural person's citizenship is determined by his or her state of domicile. *D.C. v.*
23 *Murphy*, 314 U.S. 441, 455 (1941) ("The place where a [person] lives is properly taken to be his
24 domicile until facts adduced establish the contrary."); *Kantor v. Warner-Lambert Co.*, 265 F.3d 853,
25 857 (9th Cir. 2001); *Lopez v. Nationstar Mortgage LLC*, 2015 WL 6478263, *2 (C.D. Cal. Oct. 26,
26 2015) ("In the absence of evidence to the contrary, a party will be treated as a citizen of its state of
27 residence for federal diversity purposes."). Plaintiff's Complaint does not allege or specify a state or
28 county of residence for Plaintiff. Rather, Plaintiff's Complaint alleges that Plaintiff "reported to work

1 in San Francisco, California.” *See Ex. B*, Complaint ¶ 1. Plaintiff further alleges she was a former
 2 Flight Attendant for United based out of San Francisco (“SFO”). *See Id.* Generally, United Flight
 3 Attendants are assigned a “base” airport. *See Ex. C*, Declaration of Delzyra Rosa ¶ 2. A Flight
 4 Attendant’s base is the airport where he or she will normally begin and end her trips. *Id.* A Flight
 5 Attendant’s base is often in a different state than his or her permanent home or residence. *Id.* For
 6 example, approximately two-thirds of SFO-based Flight Attendants reside outside of the San Francisco
 7 Bay Area in California. *Id.* Additionally, approximately 1,650 of the SFO-based Flight Attendants live
 8 outside of California. *Id.* Plaintiff’s employment records kept in the ordinary course of United’s
 9 business establishes that during all relevant times, Plaintiff’s residence was in Lorain County, Ohio.
 10 *Id.* at ¶ 3. Consequently, Plaintiff is domiciled in Ohio.

United’s Citizenship

11 11. Pursuant to 28 U.S.C. § 1332(c), “a corporation shall be deemed to be a citizen of any
 12 State by which it has been incorporated and of the State where it has its principal place of business.”
 13 United is now, and ever since the State Court Action commenced has been, incorporated under the
 14 laws of the State of Delaware, with its principal place of business in Chicago, Illinois under the “nerve
 15 center” test. *Ex. C*, Declaration of Delzyra Rosa ¶ 4; *see also Hertz Corp. v. Friend*, 130 S. Ct. 1181,
 16 1192 (2010).

The Individual Defendants’ Citizenship

17 12. Unserved Individual Defendants Scott Prickett and Juliana Petani are currently
 18 employed with United. *Ex. C*, Declaration of Delzyra Rosa ¶ 5. Mr. Prickett’s and Ms. Petani’s
 19 employment records kept in the ordinary course of United’s business establishes that, during all
 20 relevant times, Mr. Prickett and Ms. Petani’s residences were and are in the state of California. *Id.*

The Parties are Diverse

21 13. “Diversity removal requires complete diversity, meaning that each plaintiff must be of
 22 a different citizenship from each defendant.” *Grancare, LLC v. Thrower by & through Mills*, 889 F.3d
 23 543, 548 (9th Cir. 2018). As set forth above, complete diversity of citizenship exists here because
 24 Plaintiff (Ohio), has a different citizenship from Defendant United (Delaware/Illinois) and the
 25 Individual Defendants (California). Moreover, the citizenship of the Doe defendants is disregarded for

1 diversity jurisdiction, and therefore cannot destroy the diversity of citizenship between the parties in
 2 this action. 28 U.S.C. § 1441(a). The Parties are citizens of different states and there is a diversity of
 3 citizenship.

4 **Amount in Controversy Exceeds \$75,000**

5 14. “[A] defendant’s notice of removal need include only a plausible allegation that the
 6 amount in controversy exceeds the jurisdictional threshold; the notice need not contain evidentiary
 7 submission.” *Dart Cherokee*, 574 U.S. 81. When courts “assess the amount in controversy [they] ...
 8 include all relief to which a plaintiff is entitled if the action succeeds.” *Fritsch v. Swift Trans. Co. of*
 9 *Arizona, LLC*, 899 F.3d 785, 794 (9th Cir. 2018). In determining whether the amount in controversy
 10 exceeds \$75,000, the Court must presume Plaintiff will prevail on all of his claims. *See Kenneth*
 11 *Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 993, 1001 (C.D. Cal. 2002) (“a court
 12 must assume . . . a jury will return a verdict for the plaintiff on all claims made in the FAC”). United
 13 only needs to show by a preponderance of the evidence that Plaintiff’s claimed damages exceed the
 14 jurisdictional minimum. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).
 15 Here, the Court can reasonably ascertain from Plaintiff’s Complaint and her prayer for relief that the
 16 amount in controversy exceeds \$75,000.

17 15. Claimed Damages. Plaintiff’s Complaint seeks compensatory and general damages (*i.e.*
 18 emotional distress damages). *See, Ex. B*, Complaint, Prayer for Relief, pp. 23-24 ¶¶ 1-10. Plaintiff
 19 specifically seeks back pay and front pay owed, prejudgment interest, reasonable attorneys’ fees,
 20 penalties, liquidated damages, interest, punitive and exemplary damages, and for the costs of suit
 21 incurred, among others. *See, Id.* Courts include these categories of damages in evaluating the amount
 22 in controversy. *See, e.g., Kroske v. US Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005); *Simmons v.*
 23 *PCR Technology*, 209 F. Supp. 2d 1029, 1034 (N.D. Cal. 2002) (“[E]motional distress damages may
 24 be considered when calculating the amount in controversy even where not clearly pled in the FAC.”);
 25 *Ramirez*, 2018 WL 5816107, *10 (court includes benefits in evaluating amount in controversy). In
 26 evaluating the amount in controversy where a plaintiff seeks unpaid wages, courts consider past and
 27 “future wages ... whatever the likelihood that she will actually recover them.” *Tipton v. Airport*
 28 *Terminal Servs., Inc.*, No. 2:18-CV-09503-AB-JEM, 2019 WL 185687, at *9 (C.D. Cal. Jan. 14,

1 2019).

2 16. Past Earnings (Back Pay). Plaintiff specifically seeks economic damages in the form
 3 back pay, or past earnings. **Ex. B**, Complaint, Prayer for Relief, p. 23 ¶ 3. Plaintiff, a former United
 4 Flight Attendant, commenced employment with United in or around July 1993 and separated from
 5 employment with United on or about January 12, 2021. **Ex. C**, Declaration of Delzyra Rosa ¶ 3. In
 6 2021, Plaintiff earned \$11,205.03 in reportable W-2 wages (Box 1 on the W-2 Form, “Wages, tips,
 7 other comp.”). *Id.* That year, Plaintiff separated from employment in January 2021, and thus her 2021
 8 pay from United constituted mostly of final vacation payout and some regular pay. *Id.* In 2020, when
 9 Plaintiff worked all or most of the year, she earned \$80,422.93 in reportable wages; In 2019, when
 10 Plaintiff worked all or most of the year, she earned \$78,301.74 in reportable wages; in 2018, when
 11 Plaintiff worked all or most of the year, she earned \$83,729.69 in reportable wages. *Id.* Had Plaintiff
 12 not separated from her position, United estimates she would have earned at least a comparable amount
 13 of pay in 2021 and 2022 as she earned in 2020, not accounting for regular pay increases Plaintiff may
 14 have been scheduled to receive in accordance with her collective bargaining agreement. *Id.* Moreover,
 15 during her employment, Plaintiff received other benefits including profit sharing which is not
 16 including in this figure. *Id.* Therefore, Plaintiff’s alleged lost wages *alone*, counting from the date of
 17 her employment separation of January 12, 2021 to the date of removal of the State Court Action on
 18 August 8, 2022 satisfies the amount in controversy (~\$80,000.00 yearly wages or \$6,666.67 a month x
 19 18 months = \$120,000.06). Indeed, past earnings alone from Plaintiff’s January 12, 2021 separation
 20 date to the estimated date of trial (estimated August 2023) would be over \$200,000 (\$6,666.67 a month
 21 x 30 months). *See Fisher v. HNTB Corp.*, No. 2:18-CV-08173-AB-MRW, 2018 WL 6323077, at *5
 22 (C.D. Cal. Dec. 3, 2018) (“The parties have not set a trial date; however, the Court finds Defendants’
 23 proposed date of trial for purposes of this motion—one year from the date of removal—is a
 24 conservative estimate of the trial date.”); *Reyes v. Staples Off. Superstore, LLC*, No. CV 19-07086-
 25 CJC (SKX), 2019 WL 4187847, at *3 (C.D. Cal. Sept. 3, 2019) (“The Court next finds that . . . it can
 26 consider lost wages up until the date of a potential trial . . . Though no trial date has been set, courts
 27 have often found that one year from the date of removal is a conservative estimate of the trial date in
 28 employment cases. . . .”); *Tipton*, 2019 WL 185687, *8 (“in evaluating the appropriate period of time

1 for calculating future wages, “sixteen months from the date of removal is [] appropriate[.]”) Thus
 2 Plaintiff’s claimed “back pay” alone exceeds the \$75,000 amount in controversy threshold.

3 17. Future Earnings. Because Plaintiff seeks “front pay” pursuant to California
 4 employment statutes, to the extent Plaintiff seeks future damages or front pay, such front pay awards
 5 in California can span several years. *See Ex. B*, Complaint, Prayer for Relief, p. 23 ¶ 3; *Smith v. Brown-*
6 Forman Distillers Corp., 196 Cal. App. 3d. 503, 518 (1989) (front pay until mandatory retirement age
 7 reached which was four years); *Drzewiecki v. H & R Block, Inc.*, 24 Cal. App. 3d. 695, 705 (1972)
 8 (ten years). Assuming a conservative front-pay award of two years from the trial date, Plaintiff’s
 9 purported front-pay award just calculating wages would be \$160,000.00 (24 months x \$(\$6,666.67).

10 18. Emotional Distress Damages. Plaintiff further seeks to recover emotional distress
 11 damages (identified specifically in the Complaint as “general damages”). *See Ex. B*, Complaint, Prayer
 12 for Relief, p. 23 ¶ 3. Plaintiff also alleges “emotional injury,” and “severe emotional distress.” *See Id.*
 13 ¶¶ 52, 65, 106. Emotional distress damages are considered for the amount in controversy. *See Kroske*
v. U.S. Bank Corp., 432 F.3d 976, 980 (9th Cir. 2005) (“district court properly considered . . .
 14 emotional distress damage awards in similar age discrimination cases . . .”). Emotional distress
 15 damages in California discrimination cases can also be sizeable. *See e.g. Ramirez v. Little Caesars*
Enterprises, Inc., 2:18-CV-07993-AB-JPR, 2018 WL 5816107, at *11 (C.D. Cal. Nov. 2, 2018)
 16 (“emotional distress damages ranged from \$500,000 to \$2.5 million”). United expressly denies that
 17 any emotional distress damages should be awarded here; however, for purposes of the amount in
 18 controversy requirement, these claimed damages should be considered and in of itself exceeds the
 19 amount of controversy requirement.

20 19. Punitive Damages. Plaintiff also seeks punitive damages. *Ex. B*, Complaint, Prayer for
 21 Relief, p. 24 ¶ 8. Punitive damages are considered as part of the amount in controversy. *See Simmons*,
 22 209 F. Supp. 2d at 1033 (“[t]he amount in controversy may include punitive damages when they are
 23 recoverable as a matter of law”). “Punitive damages are available under FEHA.” *Id.* United expressly
 24 denies that punitive damages should be awarded here; however, for purposes of the amount in
 25 controversy requirement, claimed punitive damages should be considered.
 26
 27
 28

1 20. Attorneys' Fees. The Complaint also seeks an award of attorneys' fees. **Ex. B,**
2 Complaint, Prayer for Relief, p. 24 ¶ 5. “[A] court must include future attorneys’ fees recoverable by
3 statute or contract when assessing whether the amount-in-controversy requirement is met.” *Fritsch*,
4 899 F.3d at 794. “Attorneys’ fees are recoverable as a matter of right to the prevailing party under
5 FEHA.” *Id.* An “appropriate and conservative estimate for attorneys’ fees in employment cases in this
6 district may reasonably be expected to equal at least \$30,000.” *Ramirez*, 2018 WL 5816107, *10
7 (including \$30,000 of attorneys’ fees in the amount in controversy”). United expressly denies that any
8 attorneys’ fees should be awarded here; however, for purposes of the amount in controversy
9 requirement, claimed attorneys’ fees should be considered.

Diversity Jurisdiction

11 21. While United denies any liability in connection with Plaintiff's claims, because
12 diversity of citizenship exists and the amount in controversy exceeds \$75,000, this Court has original
13 jurisdiction of the action pursuant to 28 U.S.C. §1332(a).

VENUE

15 22. The State Court Action is being removed from the Superior Court of the State of
16 California, County of San Matro. *See generally Ex. B*, Complaint. As such, venue lies in the Northern
17 District of this Court pursuant to 28 U.S.C. §§1441 and 1446(a).

TIMELINESS OF REMOVAL

19 23. This Notice is timely because United filed it in the time period set forth in section
20 1446(b). United was served with a copy of the Summons and Complaint on July 8, 2022. The 30th day
21 after July 8, 2022 falls on Sunday, August 7, 2022. United files this removal the next business day on
22 Monday, August 8, 2022. *See Fed. R. Civ. P. 6(a); See also Gonzalez v. Ford Motor Co.*, 2019 WL
23 1364976,*4 (C.D. Cal. Mar. 22, 2019) (“Because 30 days ... fell on a Sunday, Defendant’s removal
24 the following day . . . was timely.”); *Rust v. Chino Prison Healthcare Providers*, 2017 WL 2952924,
25 *3 (C.D. Cal. June 9, 2017) (“[T]he[] 30-day removal deadline [of] Sunday, April 2, 2017 . . . was
26 automatically extended to Monday, April 3, 2017, by Federal Rule of Civil Procedure 6(a)(1)(C).”)
27
Therefore, the filing of this Notice is timely.

28 //

1 **COMPLIANCE WITH 28 U.S.C. §1446**

2 24. Pursuant to 28 U.S.C. §1446(a), copies of all process, pleadings, and orders served on
3 or filed by United in the Action are filed and attached with this Notice of Removal.

4 25. United will file a copy of this Notice of Removal with the clerk of the Superior Court
5 of the State of California, County of San Mateo where the removed action has been pending, pursuant
6 to 28 U.S.C. § 1446(d). Therefore, all procedural requirements under 28 U.S.C. § 1446 have been
7 satisfied.

8 **CONCLUSION**

9 26. By filing this Notice of Removal, United does not waive any defenses which may be
10 available to it. In the event any question arises as to the propriety of the removal of this Action, United
11 requests that the Court issue an Order to Show Cause so that it may have an opportunity to present a
12 brief and oral argument in further support of its position.

13 27. WHEREFORE, United gives notice that the State Court Action pending against it in
14 the Superior Court of the State of California for the County of San Mateo is removed to this Court.

16 DATED: August 8, 2022

17 REED SMITH LLP

19 By: /s/ Mona A. Razani
20 Michele Haydel Gehrke
21 Mona A. Razani
22 Attorneys for Defendant
23 UNITED AIRLINES, INC.